



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: James C. Bateman Petroleum Services, Inc.  
dba "SEMCO"  
File: B-228252  
Date: October 5, 1987

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### DIGEST

1. An uncertified corporate check is not an acceptable bid guarantee. Such an instrument lacks the status of the necessary firm commitment because it is subject to dishonor through events such as insufficient funds in the account and stop payment orders.
2. Since a bid guarantee provision in a solicitation is a material requirement which must be met at the time of bid opening, a bid which is nonresponsive due to the lack of an adequate bid guarantee cannot be made responsive by furnishing the guarantee in proper form after bid opening.

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### DECISION

James C. Bateman Petroleum Services, Inc. dba "Semco" protests the rejection of its low bid as nonresponsive under solicitation No. DLA005-87-B-0017, issued by the Defense Logistics Agency, Defense Depot-Tracy, Tracy, California. The bid was rejected because it was accompanied by a bid guarantee in the form of an uncertified corporate check. Semco asserts that its corporate check was an adequate bid guarantee which did not render its bid nonresponsive.

We dismiss the protest.

Semco asserts that when it contacted the contracting officer for clarification of what constituted an adequate "Bid Guarantee," the contracting officer told Semco to furnish a corporate check or a cashier's check in the amount of the bid guarantee, as either was acceptable. After bids were opened, Semco was informed by the contracting officer that

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the corporate check was inadequate as a bid guarantee. On the same day, Semco delivered a cashier's check as a substitute for the original. Nevertheless, the bid was rejected on the grounds that the corporate check which was submitted at the time of the bid opening was not in the form of a firm commitment and therefore was not an adequate bid guarantee pursuant to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.228-1 (1986).

The bid guarantee clause of the solicitation provided in pertinent part that "failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid" and that such guarantee must be "in writing in the form of a firm commitment, such as a bid bond, postal money order, certified check, irrevocable letter of credit, or, . . . certain bonds or notes of the United States." (Emphasis added.) FAR, 48 C.F.R. § 52.228-1. An uncertified corporate check is not an adequate bid guarantee because it lacks the status of a firm commitment in that it is subject to dishonor through such events as insufficient funds in the account and stop payment orders. See Building Systems Contractors, Inc., B-219416, July 9, 1985, 85-2 C.P.D. ¶ 36. The rationale behind the firm commitment requirement is that cashier's checks or certified checks are accepted when issued--they are not subject to dishonor. See Dustin R. Lohof, B-219862, Aug. 15, 1985, 85-2 CPD ¶ 177.

Moreover, the bid guarantee requirement involves a matter of responsiveness. Therefore, the adequacy of the bid guarantee must be determined at the time of the bid opening. The failure of a bidder to present an adequate bid guarantee at the time of bid opening renders the bid nonresponsive. Building Systems Contractors, Inc., B-219416, supra. Contrary to Semco's assertion, the language in the bid guarantee clause providing that failure to comply "may be cause for rejection" cannot be viewed as discretionary; it is just as compelling and material as if more positive language were employed. The word "may" is used in the clause because there are limited regulatory exceptions to the requirement that a bid accompanied by an inadequate bid guarantee be rejected. FAR, 48 C.F.R. § 28.101-4. It does not, however, give the contracting officer blanket discretion to waive inadequate bid guarantees. Id. at 3.

Therefore, a bid which is nonresponsive due to the lack of an adequate bid guarantee cannot be made responsive, as attempted here, by furnishing the guarantee in proper form

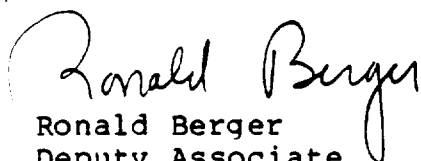
officer's alleged oral advice that an uncertified check was acceptable is in direct conflict with the express requirement of the solicitation for a firm commitment. Such advice does not bind the government and bidders rely on oral advice at their own risk. See Environmental Aseptic Services Administration, B-221316, Mar. 18, 1986, 86-1 CPD ¶ 268.

Semco makes a number of additional arguments in support of its position that it should be awarded a contract. It argues that it provided all references and other information requested. Semco also argues that the agency should have considered Semco's investment of time and energy in offering a competitive bid as well as its savings to the government of 16 percent of the cost of the contract.

All of these arguments must fail. Even though acceptance of Semco's bid would save money, the public interest in strictly maintaining the competitive bidding procedures required by law outweighs any pecuniary advantage which the government might gain in a particular case by a violation of those procedures. AVS Inc., B-218205, Mar. 14, 1985, 85-1 CPD ¶ 328.

Accordingly, we conclude that the agency acted properly in refusing to accept the tendered certified check after bid opening and in rejecting the bid as nonresponsive for failing to furnish an adequate bid guarantee.

Since we find no valid basis for protest, the protest is dismissed. 4 C.F.R. § 21.3(f) (1987).

  
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